

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	

**COMMENTS OF THE
SOUTH DAKOTA TELECOMMUNICATIONS ASSOCIATION AND
TOWNES TELECOMMUNICATIONS, INC.**

The South Dakota Telecommunications Association¹ (SDTA) and Townes Telecommunications, Inc. (Townes)² (collectively referred to as the Companies) hereby submit comments in the above-referenced docket concerning the *Recommended Decision* of the Federal-State Joint Board on Universal Service. The Companies generally support the *Recommended Decision* with respect to guidelines that should be followed by state commissions and the FCC before designating a carrier as an eligible telecommunications carrier (ETC). The Companies, however, oppose the *Recommended Decision* with respect to the basis and scope of support and urge the FCC to either reject the Joint Board's recommendations or modify them, as discussed below.

The Companies provide local exchange service, including all of the services supported by the federal Universal Service Fund (USF), in high-cost, rural areas of the country. In exchange for this support, the Companies have invested in a network infrastructure that provides affordable, high-quality basic local exchange services on a ubiquitous basis in rural areas where

¹ SDTA is an association of 30 independent, cooperative and municipal incumbent local exchange carriers (LECs) serving rural areas in South Dakota.

² Townes is comprised of seven small incumbent local exchange carriers (ILECs) serving rural areas in Arkansas, Colorado, Florida, Kansas, Missouri, and Texas.

it would not have occurred otherwise. The Companies serve as the universal service provider and carrier-of-last-resort in their service territories.

Universal service support is a crucial part of the revenue stream of rural carriers, like the Companies, that have very high fixed costs for loops and local switching, and which allows rural carriers to keep rates charged to end user customers affordable and reasonably comparable to rates for similar services in urban areas. Accordingly, the Companies are interested parties in this proceeding. Although through the years universal service has worked to establish high quality, affordable services, the Companies believe that the Joint Board's recommendations concerning the basis and scope of support for rural areas place the continued effectiveness of the program in jeopardy.

Basis of Support

In the *Recommended Decision*, the Joint Board offers no recommendation on changes in the basis of support namely, how support should be determined for competitive ETCs (CETCs). Instead, the Joint Board recommends that it and the FCC consider modifications to the basis of support for all ETCs when they undertake their review of high-cost support mechanisms for rural and non-rural carriers. Thus, rather than address the important issue of whether the "identical support" rule should be eliminated, the Joint Board recommends further delay.

The Companies urge the FCC to resolve this issue now. Specifically, the FCC should end the "identical support" rule, whereby support for CETCs is based on the support received by the incumbent LEC because it results in excessive support and it is not competitively neutral.

The "identical support" rule results in excessive support, contrary to the requirements of the Act. Section 254(b) of the Act directs the Commission to base policies for the preservation and advancement of universal service on several principles, including that support should be

specific, predictable, and sufficient.³ The court has indicated that “sufficient” support means not only that support must be enough to meet the goals of the Act but that “excessive funding may itself violate the sufficiency requirements of the Act.” (emphasis added).⁴ Thus, providing either too much or not enough support for CETCs based on the costs of another carrier fails the “sufficiency” standard.

The “identical support” rule provides excessive support for CETCs because it provides support for costs that they do not incur. For example, wireless CETCs are exempt from rate and state entry regulation, which allows them to avoid a number of costs associated with carrier-of-last-resort obligations and federal and state filing requirements. Their facilities are less sensitive to distance and, therefore, the cost to serve low density areas is less. In addition, wireless CETCs avoid certain costs incurred by ILECs because they are not required to meet the same service quality standards; they do not provide ubiquitous local service; and they do not offer equal access to long distance carriers. Non-LEC wireline CETCs also unfairly receive support for costs that they do not incur, such as those associated with service quality requirements and carrier-of-last-resort requirements.

In rural areas, because universal service support is based on the ILEC’s embedded cost, the level of universal service support is necessarily tied to all of the requirements imposed on ILECs, like service quality. A CETC in a rural area that is not subject to the same requirements, however, is able to avoid costs that the ILEC incurs even though it is compensated for those costs when it receives support based on the ILEC’s cost. Thus, the current funding mechanism provides excessive support – or a windfall – to the CETC.

³ 47 U.S.C. §254(b)(5).

⁴ *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 619 (5th Cir. 2000).

The record in this proceeding shows that under the “identical support” rule, high cost support provided to wireless CETCs, in many instances, is a “pure windfall”.⁵ For example, *The Wall Street Journal Online* reported that according to a JP Morgan analyst, the approximately \$40 million in universal service support that Western Wireless will receive “should be 100% accretive to Western Wireless margins as there are no costs associated with USF.”⁶ Accordingly, the “identical support” rule should be eliminated.

The “identical support” rule also is not competitively neutral. When the Commission adopted the principle that federal support mechanisms should be competitively neutral, it defined competitive neutrality as neither unfairly advantaging nor disadvantaging particular service providers or technologies.⁷ The “identical support” rule is not competitively neutral because it bestows an advantage on CETCs by providing excessive support for costs that the CETCs do not incur.

Providing support to CETCs in excess of their costs also increases the universal service funding obligations of all consumers more than is necessary to meet the requirements of the Act. The Joint Board attributes the “potential for uncontrolled growth” in the high cost fund to the designation of CETCs and in particular, states that much of the growth “represents supported wireless connections that supplement, rather than replace, wireline service.”⁸ Thus, determining the correct amount of support for CETCs should be the first step to controlling unnecessary growth in the fund.

⁵ NTCA Comments to the Joint Board at 16, citing Salomon Smith Barney, Wireless Services, USF Subsidies May Significantly Improve Subscriber Economics for Rural Carriers, Multi-Company Note, p.1 (January 21, 2003).

⁶ *The Wall Street Journal Online*, May 14, 2003.

⁷ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8801-03 (1997) (*First Report and Order*) (subsequent history omitted).

⁸ *Recommended Decision* at ¶98.

Scope of Support

Rather than address the amount of support provided to CETCs to correctly size the fund, the Joint Board recommends that the FCC simply reduce the “scope” of the fund for all ETCs. Thus, in the *Recommended Decision*, the Joint Board argues that in order to control the growth in the size of the universal service fund, support should be limited to a single connection or the primary connection of the customer. The Joint Board argues that this is more consistent with the goals of section 254 of the Act than the present system and that it is “necessary to preserve the sustainability of the universal service fund.”⁹ The Joint Board also states that it would send more appropriate entry signals in rural and high-cost areas and it would be competitively neutral. To minimize the potential impact of restricting the scope of support in areas served by rural carriers, the Joint Board suggests that the FCC consider various “hold-harmless” type methods. The Joint Board’s conclusions on this point are simply wrong and its recommendation should be rejected.

The Joint Board’s recommendation is not consistent with the goals of section 254 of the Act. Section 254(b) requires the Joint Board and Commission to base universal service on a number of principles including that “quality services should be available at just, reasonable, and affordable rates”¹⁰ and that consumers in rural areas receive services comparable to those received by urban consumers and at comparable rates.

The total ILEC network is necessary to provide services in rural areas comparable to the services provided in urban areas. Accordingly, universal service support must be for the total network, which means total lines. Any reduction in high-cost support due to limiting support to primary lines would adversely affect the ability of rural carriers to deliver universal service to all consumers at affordable prices. The loss of support for additional lines in rural areas would

⁹ *Recommended Decision* at ¶87.

significantly increase the rates to end users for such lines, which could lead to a reduction in the number of lines. This would impact the overall extent and quality of the network because the loss of a line does not translate into a corresponding reduction in the cost of building and maintaining the ILEC network. It also would increase significantly the cost to local businesses, schools, government, health care providers, and other end-user customers with multiple lines, which could have a significant adverse impact on the community, which in turn would impact the ILEC and its network.

Further, rural ILECs made substantial investments to provide service to all consumers under the existing universal service support mechanism that allows for the recovery of a carrier's embedded network costs. If these costs are no longer recovered, then they could become stranded investment. This would jeopardize the ability of rural carriers to service debt for plant facilities already constructed and impact future investment to modernize the telecommunications infrastructure in rural America.

The Joint Board also is wrong that eliminating support for non-primary connections is necessary to control the size of the fund. Rather, as shown above, the Companies maintain that this can be better achieved by modifying universal service support for CETCs to only provide the level of support necessary to fund supported services.

The Joint Board is wrong that its recommendation will send more appropriate entry signals in rural and high-cost areas. It would seem that this claim must be based on the theoretical world where competitive carriers have not yet entered the market, rather than the real world described by the Joint Board where competitive wireless carriers are already in rural markets. For example, in paragraph 98 of the Recommended Decision, the Joint Board states

¹⁰ 47 U.S.C. §254(b)(1).

that much of the growth in the universal service fund “represents supported wireless connections that supplement, rather than replace, wireline service.” As the FCC is aware, there are three to six wireless licensees even in rural areas. Even some of the most rural service territories in South Dakota have at least two wireless carriers currently operating. The Joint Board’s recommendation clearly will not affect entry decisions for carriers that are already in the market. Moreover, for these carriers, the Joint Board’s recommendation will do little to affect their decision to seek universal service support. Rather, as long as the support amount per connection is greater than the cost of providing service, wireless carriers will have an incentive to seek ETC status.

Further, as demonstrated above, providing support to CETCs based on the ILEC’s costs is not competitively neutral as it provides a windfall to the CETC. In this regard, the Joint Board’s “hold harmless” option to recalculate total ILEC support based on the primary connection only would make the competitive disparity greater by providing even more support in excess of cost to CETCs.

Thus, the Joint Board’s recommendation does not address the problem identified by the Joint Board; it will not achieve the Joint Board’s stated goals; and it jeopardizes an existing system of support to incumbent LECs that has worked well through the years to provide high-quality service to consumers in rural areas. For these reasons, the Joint Board’s recommendation should be rejected.

In the alternative, the Companies recommend that the FCC adopt an interim measure to address the real problem of excessive CETC support until a new support mechanism for CETCs can be developed. One such measure could be to cap the total amount of support available to CETCs at the amount provided today. Any additional CETC connections that become eligible

for support would draw support from that amount.

Guidelines

The Joint Board recommends a number of guidelines that states should consider in determining whether designation of more than one ETC is consistent with the public interest, convenience and necessity. Although the Companies generally agree with the proposed guidelines for the states, it is not clear that they will be effective if they are voluntary. This is especially so in light of the attitude promoted by wireless carriers that by designating additional ETCs the state commission can bring “free” money to the state. In any event, the Companies urge the FCC to adopt the proposals as mandatory requirements that the FCC must consider before it designates an ETC where the state commission does not have jurisdiction.

With respect to the specific guidelines, the Companies offer the following comments. The Joint Board recommends that the FCC adopt a guideline to require ETC applicants “to demonstrate their capability and commitment to provide service throughout the designated service area to all customers who make a reasonable request for service.”¹¹ In an ETC designation proceeding pending before the South Dakota Public Utilities Commission, Western Wireless admitted that its service is engineered to only work “to the curb” and not within homes and businesses. Since mobility is not a supported service, the Companies believe that a service designed to provide access from the roads does not meet the requirement that ETCs must provide voice grade access to the public switched network and it would not be sufficient to demonstrate the applicant’s “capability and commitment to provide service throughout the designated service area to all customers who make a reasonable request for service.”¹² Accordingly, the FCC should plainly exclude service “to the curb” as service that is provided “throughout the

¹¹ *Recommended Decision* at ¶54.

designated service area.”

With respect to the public interest analysis, the Companies maintain that for rural areas, the public interest determination should include a cost/benefit analysis of supporting multiple carriers in high cost, low demand areas. This should include an analysis of whether quality services at affordable rates can continue to be provided by all ETCs if an additional ETC is designated. The Companies agree with the Joint Board recommendation that this analysis may also include the level of per-line support provided to the area. In essence, it should require an examination of whether the designation of an additional ETC would result in uneconomic competition.

With respect to the annual certification requirement, the Companies urge the FCC to require states to meet certain criteria before the FCC accepts their certifications and authorizes the release of federal universal service funds. Section 254(e) requires carriers receiving support to “use the support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.”¹³ However, there is no mechanism in place to ensure that this is the case. To correct this situation, the annual state certification should be required to contain the following information for each CETC for which support is requested:

1. The annual amount of federal universal service support received by the CETC for each ILEC service area in which it receives support.
2. Detailed information on the annual investments made in each of the ILEC’s service areas.
3. If the federal universal service support received by the CETC exceeds the investment made in an ILEC’s service area, an explanation of how the remaining support was used to provide,

¹² *Id.*

¹³ 47 U.S.C §254(e).

maintain, and upgrade facilities and services for which the support is intended, as required by the Act.

The FCC should deny support for any CETCs where the state commission does not provide this information. Also, in connection with this requirement, the FCC should direct USAC to clearly indicate to each CETC to whom support is provided, the amount of support provided for each ILEC service area in which the CETC receives support.

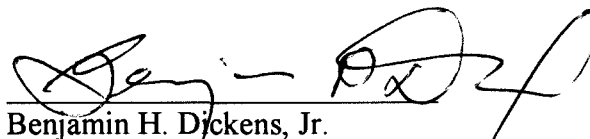
Conclusion

Based on the foregoing, the Companies request that the FCC adopt the recommendations contained herein.

Respectfully submitted,

**SOUTH DAKOTA TELECOMMUNICATIONS
ASSOCIATION**

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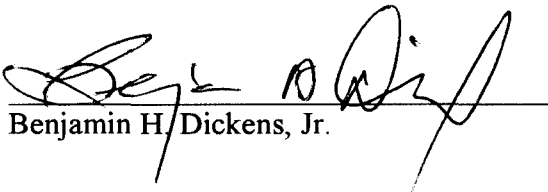
Dated: August 6, 2004

CERTIFICATE OF SERVICE

I, Benjamin H. Dickens, Jr., hereby certify that copies of the foregoing Comments of the South Dakota Telecommunications Association and Townes Telecommunications, Inc. were served on this 6th day of August, 2004 to the persons listed below:

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